IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 538 of 2000
in
SPECIAL CIVIL APPLICATION No 3307 of 2000

with

CIVIL APPLICATION No 11929 of 2000
in
LETTERS PATENT APPEAL No 538 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KRUPABEN B TRIVEDI
Versus
STATE OF GUJARAT & ANR.

Appearance:
MR SB VAKIL, Senior Counsel with MR ASPI M KAPADIA
for Appellant
MR SK JHAVERI, Senior Counsel for Respondent No. 1
MR KM PATEL for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision:14/02/2002

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. This Letters Patent Appeal has been preferred against the judgment and order of the learned Single Judge delivered orally on 28.7.2000, 4.8.2000, 7.8.2000 & 11.8.2000, whereby the termination of services of the petitioner as a sole member of the Gujarat Affiliated Colleges Services Tribunal by the State of Gujarat has been upheld.

#. To provide for constitution of a Tribunal for the purpose of determining disputes relating to conditions of service of the members of teaching, non-teaching, and other academic staff of affiliated colleges in the State of Gujarat, and for matters connected therewith, the State Legislature passed The Gujarat Affiliated Colleges Services Tribunal Act, 1982, being Gujarat Act No.9 of 1982 (hereinafter referred to as "the Act"). The Act came into force on 9th December, 1981, in accordance with Section 1(3) thereof. Section 3 of the Act provides for constitution of the Gujarat Affiliated Colleges Services Tribunal and Section 4 provides for Rules to be prescribed for terms and conditions of a person constituting the Tribunal. Both, Section 3 & 4 of the Act, being directly before us for interpretation in this case, are required to be reproduced in full.

"3. (1) There shall be established by the State Government by a notified order a Tribunal to be called the Gujarat Affiliated Colleges Services Tribunal.

(2) The State Government shall appoint a District Judge or a person who has been or is qualified to be a Judge of a High Court or a District Court to be the Tribunal.

Explanation: In this section the expression "District Judge" shall have the meaning assigned to that expression in Article 286 of the Constitution.

4. The term for which the person constituting the Tribunal shall hold office and his conditions of service shall be such as may be prescribed."

Section 4 of the Act which enables the Government to fix the terms and conditions of service of a person constituting the Tribunal uses words, "...shall be such as may be prescribed". The word `prescribed' has been defined in Section 2(g) of the Act to mean, "prescribed by rules made under Section 17". Section 17 of the Act is a rule making power of the Government. Section 17(1), with sub-section (2)(a) are also relevant for the purpose of this case, and they read thus:

"17. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may be made for all or any of the following matters, namely:-

(a) the term for which a person constituting the Tribunal shall hold office and his conditions of service under section 4".

#. In exercise of powers under Section 17(2)(a) read with Section 4 of the Act, the State Government framed Rules named as the Gujarat Affiliated Colleges Service Tribunal (Terms and Conditions of Services of Person Constituting the Tribunal) Rules, 1982 (hereinafter referred to shortly as "the Rules"). It is necessary to reproduce all the Rules which are directly before us for interpretation.

"1. Short title -- These rules may be called the Gujarat Affiliated Colleges Services Tribunal (Terms and Conditions of Services of Person Constituting the Tribunal) Rules, 1982,

2. Term of person constituting Tribunal -- The person constituting the Tribunal shall hold office for a period of two years on and with effect from the date on which he takes over the charge of office.

3. Conditions of services of person constituting

Tribunal -- The following shall be the conditions of service of the person constituting the Tribunal:-

(1) He shall be paid a remuneration of Rs.3500 per month less pension admissible to him and also less pension equivalent of gratuity. He shall also be entitled to payment of allowances admissible to him as a Judge of the Gujarat High Court and shall be Governed by the Conditions of Service applicable to him as a Judge of the Gujarat High Court.

(2) He shall be entitled to a suitable residential accommodation for his residence during the period he holds the office of the Tribunal.

(3) He shall be allowed to join the Contributory Provident Fund in accordance with the provisions of the Government Notification, Finance Department No.GH1/PER-2470-1002-CH dated the 7th January, 1971 subject to the condition that the contributory Provident Fund shall be payable only on his completion of two years' service after re-employment.

By order and in the name of the Governor of Gujarat.

D.M.Pujara
Dy.Secretary to Government"

#. The main question that is raised before us is whether the aforesaid Rules regulating the terms and conditions of services of a person constituting the Tribunal are applicable only to a person who had been a retired Judge or these Rules also apply to a person appointed as a Tribunal who is a member of the Bar having requisite qualification for being appointed as a District Judge or a High Court Judge, as provided in Section 3(2) of the Act.

#. Before coming to the main question of application and interpretation of Rules, necessary facts are required to be stated. It is not in dispute that the petitioner, before her appointment as the Tribunal, was a member of the Bar and was duly qualified to be appointed as a

District Judge as that expression is understood in Article 286 of the Constitution. By an order passed on 12.5.97, the petitioner was appointed to the one man Tribunal and the terms of the appointment order read thus:

Order:

Education Department,
Sachivalaya, Gandhinagar

Dated the 12th May, 1997

No.GHS/SH/11/UST/1997/1/KH

In exercise of the powers conferred by sub-section (2) of Section 3 of the Gujarat Affiliated Colleges Services Tribunal Act, 1982 (Gujarat Act No.9 of 1982), the Government of Gujarat hereby appoints Krupaben B.Trivedi, to be the Tribunal for the purpose of the said Act.

By order and in the name of the
Governor of Gujarat

sd/- D.C.Vora

Dy.Secy. Govt. of Gujarat,
Education Department

From the aforesaid, it is clear that in the order of appointment, no term or tenure of appointment has been fixed for the petitioner.

#. A Public Interest Litigation being Special Civil Application No.49 of 1997 came to be filed by one practicing advocate Shri A.D.Oza, ventilating the grievance that in the absence of proper infrastructure and Rules regulating the terms and conditions of various educational Tribunals in the State, the functioning of the Tribunals was impaired. It may be stated that there are various enactments under which different Tribunals have been constituted in the State of Gujarat for regulating the terms and conditions of the members appointed as Tribunals for Primary Education, Secondary Education, Higher Secondary Education, Affiliated Colleges and University Services. In the aforesaid Public Interest Litigation, several orders came to be passed and directions given by the Court granting time to the Government to provide necessary infrastructure and making necessary Rules and Regulations for regulating the terms and conditions of the persons appointed to various

Tribunals. During the pendency of this Public Interest Litigation and pursuant to the orders passed by this Court, the State Government passed a Resolution dated 29.12.97 prescribing terms and conditions of appointment of the petitioner and Shri Dhruman Vasudev Mehta, appointed as members of the Gujarat Affiliated Colleges Services Tribunal and the Gujarat Higher Secondary Education Services Tribunal respectively. It is necessary to reproduce the Resolution in full as the petitioner states that her conditions of service and tenure fixed under this Resolution cannot be ignored and her services could not have been terminated on the basis of the Rules on which the State of Gujarat now relies. The Resolution dated 29.12.97, rendered in English, reads as under:

The Gujarat Affiliated Colleges Services Tribunal Act, 1982

The Gujarat Higher Secondary Education Services Tribunal Act, 1983

Regarding determining the terms and conditions for appointment as Tribunal

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Government of Gujarat
Department of Education
Resolution No.UST-1997-1-B.1
Sachivalaya, Gandhinagar
Date: 29.12.1997

Read:

1. Government Notification No.GH-SH-11-UST-1197-1A.1 dated 12.5.1997 of the Education Department

2. Government Notification No.GH-SH-9-UMS-1195-1536G.1 dated 17.5.1997 of the Education Department

Resolution:

The State Government hereby prescribes the following terms and conditions for Krupaben B.Trivedi and Dhruman Vasudev Mehta, who have been appointed as Tribunal vide Government Notifications No.GH-MH-11-UST-1997-1-B.1 dated 12.5.1997 and No.GH-SH-9-A-UMS-1195-1536-G.1 dated 17.5.1997 of the Education Department, Government of Gujarat.

1. The Tribunals shall be entitled for fix pay of Rs.8,000/- per month plus allowances admissible to the Judges of the High Court.

2. The Tribunals shall be given the benefits of Pension and Gratuity as admissible to the High Court Judges.

3. The appointment of the Tribunals shall be upto the period they attain 58 years' of age.

4. The Tribunals shall not be provided with the following facilities as provided to the High Court Judges:

(i) They shall not be provided facility of air-condition at their residence.

(ii) They shall not be provided the benefits of LTC as being provided to the High Court Judges, however, they shall be given the benefits of LTC as admissible to District Judges

(iii) The Tribunals will be given T.A. and D.A. during journey as admissible to District Judges

(iv) The Tribunals shall not get vacation period as per High Court but it shall be as per City Civil Court

5. As and when recommended by the High Court, whatever Rules and Regulations and provisions as may be framed, for constituting a common Tribunals in place of all existing Tribunals, pay and perks and facilities of the members thereof, etc. shall be automatically made applicable to the Tribunals and their terms and conditions shall also change accordingly.

6. These orders have been issued with consent of the General Administration Department and Finance Department given on 23.12.97 and 29.12.97 respectively on the files of even numbers.

By the order of and in the name of the Governor
of Gujarat.

D.C.Vora
Deputy Secretary,
Education Department

The Public Interest Litigation, during the pendency of which the aforesaid Resolution came to be passed, was finally disposed of by the Court on 28.4.98 on the assurance given by the State Government that further steps would be taken to provide necessary infrastructure and uniform Regulations for the terms and conditions of services of persons appointed to various Tribunals.

#. The petitioner's services thus continued on the basis of her order of appointment and the Resolution dated 29.12.97 which fixed her tenure of service upto the age of 58 years and the salary and other conditions of services mentioned therein.

#. The stand of the State of Gujarat, as now disclosed in the Affidavit of the Under Secretary Shri R.A.Dave, is that the then Governor brought to the notice of the Government that the Resolution dated 29.12.97, prescribing the tenure of the petitioner upto the age of 58 years and other terms and conditions, is contrary to the Statutory Rules framed under Section 17 of the Act. Having thus noticed, the State Government issued a Show Cause Notice dated 16.4.99 to the petitioner calling upon her to show cause as to why her services be not brought to an end on expiry of period of two years fixed by statutory Rule 2 of the Rules regardless of the Resolution of the State Government dated 29.12.97, which it was alleged, was contrary to the statutory Rules. The petitioner was called upon to make a representation in writing as also personally on the date fixed. According to the petitioner, a detailed reply by way of representation to the Show Cause Notice was sent on 25.10.99, raising several legal and factual pleas and narrating all the events which led to passing of the Resolution and fixation of her tenure and terms and conditions. The State Government, by the impugned order made on 13.4.2000, did not consider the representation made by petitioner in detail and terminated her services forthwith. The preface paragraphs No.1 to 3 of the impugned order of termination merely make a mention of the orders of appointment and the Resolution passed with regard to her tenure and conditions of service. Cryptic

reasons for passing of the impugned order of termination of her services are contained in paragraphs No.4 and 5 of the said order and need reproduction:

> 4. Considering the representation made by Smt.Trivedi pursuant to the letter dated 16.4.99 of the Department, contentions raised in para-2 of the Special Civil Application filed by her before the Hon'ble High Court, the provisions of the statutory Rules framed under the Gujarat Affiliated Colleges Services Act, 1982, as well as the legal opinion of the Government Pleader, the matter was forwarded to the Legal Department, for opinion.
>
> 5. On submitting the present matter along with the opinion of the Legal Department, through the Chief Secretary, for orders of the Government at higher level, the following order is passed by the Government.
>
> ORDER
>
> The tenure of Smt.Krupaben B.Trivedi, as the Gujarat Affiliated Colleges Services Tribunal, is brought to an end with immediate effect.
>
> By the order of and in the name of the Governor of Gujarat.
>
> (R.A.Dave)
> Deputy Secretary to the
> Government,
> Department of Education
>
> (rendered into English from Gujarati)

#. The learned Single Judge, by the order under Appeal, rejected the contentions advanced on behalf of the petitioner that the Statutory Rules do not regulate the terms and conditions of a person appointed as Tribunal from Bar. The learned Single Judge came to the conclusion as under:

> "..... In view of the statutory provision governing the service condition of the petitioner, the Government could not have prescribed the term of appointment which was contrary to the statutory provision. If such a contract has been entered into, the same being contrary to the statutory provisions, shall have

no binding effect and the statutory provision shall prevail over the terms and conditions stipulated under the aforesaid Government Resolution."

So far as the Resolution of the Government dated 29.12.97 which was passed during the pendency of the Public Interest Litigation for regulating the terms and conditions of such services of the petitioner is concerned, the learned Single Judge made the following observations:

"It is contended that after the appointment of persons to various Tribunals as discussed hereinabove, for a long time the service conditions of such persons were not prescribed and the Government moved its machinery only after the Special Civil Application No.49/97 was preferred in public interest and orders thereon were made on various dates. Since the Government was acting under the orders of the Court, the concerned officer lost sight of the statutory provisions contained in Rule-2 of the Rules of 1982. This infirmity in the Resolution dated 29th December, 1997, was first time noticed by then Hon'ble Governor Shri Anshuman Singh. The infirmity having been brought to the notice of the Government, proper action was initiated to modify the conditions of service of the petitioner and to terminate her service upon expiry of statutory tenure. I believe that this hardly is an excuse coming from the Government. The Resolution dated 29th December, 1997, has been issued by an officer not less than deputy Secretary to the Government. The officer of this level could not have lost sight of the statutory provision, nor should have been the petitioner given an impression that she had secured an appointment till she attains the age of 58 years. Such negligence hardly befits a Government officer. However, though no relief can be granted to the petitioner on this ground either. There can not be estoppel against the statutory provision and the contractual terms must give way to the statutory provision."

##. The principal submission made by the learned senior counsel Shri S.B.Vakil on behalf of the petitioner is that the statutory rules framed under the Act have to be read conjointly to gather the intention of the subordinate legislation and to find out as to whether it

governs the terms and conditions of persons appointed as Tribunal from all the sources of recruitment provided in Section 3(2) of the Act. The submission made on behalf of the petitioner is that Rule 2 of the Rules which prescribe two years as a tenure of the persons constituting Tribunal read with Rule 3 of the said Rules clearly indicates that the Rules were framed only to regulate conditions of service of persons appointed to Tribunal who were Judges. The members of the Bar who can also be appointed as member of the Tribunal are not covered by the Rules. The terms and conditions of service of persons appointed to the Tribunal from Bar being an unoccupied field by the statutory Rules, Resolution could have been passed by the State Government in exercise of its executive powers under Article 162 of the Constitution. It is therefore contended that it is not open to the State Government to resile from its own Resolution passed on 29.12.97 and terminate the services of the petitioner on the basis of Rule 2 of the statutory Rules.

##. The alternative submission made on behalf of the petitioner based on the decision of the Hon'ble Supreme Court in the case of S.P.Sampath Kumar v. Union of India, reported in AIR 1987 SC 386, is that such a short tenure of two years for an appointee from the Bar would not only be disincentive but would also erode the independence of judiciary because such an appointee from the Bar would always be required to look up to his employer after each completion of two years' tenure for re-appointment. The observations of Hon'ble Supreme Court made in paragraph-21 of Sampath Kumar's case were relied.

##. It is also urged on behalf of the petitioner that Rule 2 of the Rules fixing two years' tenure if held applicable to a Bar appointee, in practice, would dry up completely, one source of recruitment from the Bar, because no Bar member having requisite qualification to be appointed as a Judge of High Court or as a District Judge and competent would stake his career at the Bar for such a short term appointment. It is submitted that Rule 2 of the statutory Rules was clearly intended to apply only to persons appointed as Tribunals who come from service as a Judge and it was never meant to be made applicable to appointees from the Bar as is clear from the Government's own stand in the Public Interest Litigation in this Court and the consequent Resolution dated 29.12.97 produced before the Court in that litigation.

##. On behalf of the petitioner, the impugned order of termination was also challenged on the ground that it is not a speaking order as it contains no reasons showing on what grounds of fact and law, the petitioner's detailed representation to the Show Cause Notice for termination was rejected.

##. Number of rulings were cited in support of the above propositions to which we do not find it necessary to make a reference at this stage.

##. It may also be mentioned that after terminating the services of the petitioner, the private-respondent Shri Amrutlal Shamaldas Trivedi, a retired Judge of the City Civil Court, was appointed by an order dated 13.4.2000 as a sole member of the Tribunal in the vacancy caused after termination of the services of the present petitioner. Said appointment order dated 13.4.2000 (Annexure-B to the petition) in favour of private-respondent Shri A.S.Trivedi, is also under challenge before us.

##. Shri S.K.Jhaveri, learned senior counsel specially engaged by the State Government made strenuous efforts to support the action of the State Government. It is contended on his behalf that one member Tribunal is a "tenure post" and the tenure is fixed by statutory Rule 2 of the Rules which applies to a person appointed as Tribunal from whatever prescribed sources, i.e. sitting or retired judge or from the Bar. It is submitted that where the tenure is fixed by statutory Rule 2, no executive instructions or executive order can be passed contrary to the statutory Rule and such executive instructions or orders are not binding on the Government. It is contended that the Resolution dated 29.12.97 came to be passed by the Government under pressure of Public Interest Litigation and under a mistake of law. and the Government is not therefore estopped against law from taking a stand that the petitioner's fixed tenure of two years on the post came to an end and she had therefore to quit in the absence of a fresh decision to appoint her. The learned counsel also submitted that Rule 3 of the Rules can also be made applicable to an appointee from the Bar to the extent the said Rule can be made applicable. It is also argued that Rule 2 of the Rules fully applies to an appointee from the Bar and Rule 3 of the Rules is applicable to the extent it can be made applicable to such a recruit from the Bar. It is argued that the statutory Rules leave no scope or gap or lacunae to be filled in by any executive order or Resolution.

##. For private respondent Shri A.S.Trivedi, who has

been appointed in place of the petitioner as Tribunal, learned counsel Shri K.M.Patel appeared and apart from supporting the submission made on behalf of the State Government, made further contentions as under:

It is submitted that the term or tenure of the person appointed to Tribunal is governed by Rule 2 of the Rules which cannot be applied restrictively only to appointees from the service and not from the Bar. It is submitted that Rule 2 is intended to apply to all kinds of recruits from whatever sources under the Act. Rule 3 of the Rules regulates the conditions of service and sub rules 1 to 3 thereunder should be held applicable to the extent possible to a Bar recruit if all the conditions mentioned in Rule 3 cannot apply to such a recruit. The submission made is that the Court has to proceed on the assumption that the Rule making authority intended to lay down service condition of one member Tribunal under Section 3 of the Act and it cannot be assumed that it made a mistake in not making Rules for appointees from the Bar. Reliance is placed on the observations of the Hon'ble Supreme Court made in paragraph-13 in the case of Dadi Jagannadham v. Jammulu Ramulu & ors. reported in (2001) 7 SCC 71. It is also urged that it is not open to the Court to find gaps and lacunae in the provisions of the Rules when the provisions of the Act contemplate framing of one uniform term and condition and tenure for one member Tribunal.

##. As we have mentioned at the outset, the principal question that arises for our decision is whether the statutory Rules govern the tenure and appointment of a member appointed from the Bar as a Tribunal. A close and critical examination of the provisions of the Act and the Rules quoted above therefore becomes necessary. As is clear from sub-section (2) of Section 3 of the Act, the sources of recruitment to one member Tribunal are following:

(i) a sitting District Judge;
(ii) a retired Judge being a person who has been or is qualified to be a Judge of the High Court or District Judge, meaning thereby a retired High Court Judge or retired Judge of the District Court with above qualification; and
(iii) any member of the Bar who is qualified to be appointed as a Judge of the High Court or a District Court.

Section 4 of the Act enables the State Government

to prescribe by Rules, the terms and conditions of services of a person constituting the Tribunal. Section 4 of the Act uses two different expressions, namely `term' and `condition' of service. The expression `term' may include tenure. Section 17 of the Act is rule making power of the State Government and clause (a) of sub-section (2) of Section 17 of the Act enables the State Government to frame Rules prescribing `term', i.e. tenure and `condition' of service of a person appointed as Tribunal. In exercise of powers under Section 17(2)(a) read with Section 4 of the Act, Rules of 1982 were framed. Rule 2 of these Rules prescribes two years' term for a person appointed to the Tribunal. Rule 2, read independently and in isolation from Rule 3 of the Rules, no doubt, clearly indicates that this two years' tenure may be made applicable to any person appointed to the Tribunal from any of the available sources, i.e. Bar or service. Rule 3 of the Rules lays down the conditions of service of a person constituting the Tribunal. Sub-rule (1) of Rule 3 of the Rules fixes the remuneration as Rs.3,500/- per month and uses the expression, "less pension admissible to him and also less pension equivalent of gratuity". Sub-rule (1) further reads that, "he shall also be entitled to payment of allowances admissible to him as a Judge of the Gujarat High Court and shall be governed by the conditions of service applicable to him as a Judge of the Gujarat High Court". The argument advanced on behalf of the respondents is that in sub-rule (1) of Rule 3 of the Rules, remuneration of Rs.3,500/- per month (which now has been increased) in any case can be made applicable even to an appointee from the Bar, may be it is argued that the other part of the same sub-rule (1) of Rule 3 of the Rules may not apply to a member of the Bar but to the extent it is applicable to a Bar member, this Rule should be applied. So far as sub-rule (2) of Rule 3 of the Rules is concerned, it makes a member of the Tribunal entitled to suitable residential accommodation during the period of his office. Sub-rule (3) of Rule 3 of the Rules speaks of benefit of Contributory Provident Fund and it states that a person appointed as Tribunal shall be allowed to join Contributory Provident Fund as notified by the Government, subject to the condition that the Contributory Provident Fund shall be payable only on his completion of two years' service after re-employment. The basic controversy which arises from the contentions advanced from either side on the interpretation and application of the Rules is that according to the petitioner's case, Rule 2 cannot be read in isolation and has to be read with Rule 3 harmoniously to find out the intention of the Rules in the matter of its application

to a particular appointee from a particular source. On the other hand, the stand on the part of the State Government and private respondent is that Rule 2 should be read independently of Rule 3 of the Rules and so far as the term or tenure of an appointee is concerned, it is fixed for an appointee from any of the sources, i.e. services or Bar. It is also submitted that Rule 3 to the extent it can be made applicable would apply to a member of the Bar, may be that the other part thereof may not apply. So far as last part of expression in sub-rule (3) of Rule 3 of entitlement of Contributory Provident Fund to be made payable on completion of two years' service after re-employment is concerned, it is submitted by learned counsel appearing for private respondent that it may even apply to an appointee from the Bar who will get Contributory Provident Fund after completion of two years' service.

##. On the question of terms and conditions of service, when Rules have been framed, it is not possible to accept the contention on behalf of the respondents that Rules 2 and 3 of the Rules should be construed and applied independently of each other. For a harmonious construction of Rules, all the Rules have to be read conjointly to find the Legislative intent. The Legislation, for consideration before us, is a piece of subordinate Legislation. The source of Legislation is to be found in the Act itself. As has been mentioned above, there are various sources of recruitment to one man Tribunal. It has also been stated and not disputed at the Bar that before the appointment of the petitioner on the post, the Tribunal was always headed by a retired High Court Judge, except for the interregnum when one was holding charge before a regular appointment. As regards Rules 2 and 3 of the Rules, if read together, it is not possible to find a discernible intention on the part of the Rule making authority that it intended to cover even the terms and conditions of services of an appointee from the Bar. In interpreting Rule 2 fixing two years' term, Rule 3 of the Rules cannot be read in isolation. Rule 3 of the Rules which lays down the condition of service of a person appointed to the Tribunal is regarding the same person who will have a term of two years under Rule 2. Sub rule (1) of Rule 3 of the Rules cannot be applied to a member of the Bar in a truncated manner as is sought to be done on behalf of the respondents. It is difficult to accept the contention that sub-rule (1) of Rule 3 only to the extent of remuneration be applied and the other part of the said Rule making mention of pension and gratuity admissible to a Judge of High Court and conditions of service of Judge of Gujarat High Court has to be ignored

and be treated as not applicable for regulating conditions of service of a member of the Bar. Similarly, sub-rule 3 of Rule 3 speaks of benefit of Contributory Provident Fund. The language of the last sentence of sub-rule (3) of Rule 3 of the Rules stating, "subject to the condition that the Contributory Provident Fund shall be payable only on his completion of two years' service after re-employment" makes it inapplicable to an appointee from the Bar. If the appointment of a Bar member is only for two years, the Rule stating that Provident Fund will be payable after two years' service after re-employment is meaningless if he is not granted re-employment after his initial tenure of two years. The use of expression, "two years' service after re-employment" clearly evinces legislative intent of making it applicable only to an appointee from service.

##. It is settled that in construing a Rule, the stand of the concerned Department of the State Government on administrative side has no relevance but for supporting the construction that the Court places on the Rules, support can be had from the fact that at the relevant time when Public Interest Litigation was pending seeking directions of the Court for fixing the term and condition of services of members of the Tribunal, the State Government also found that the existing statutory Rules do not cover the terms and conditions of service of an appointee from the Bar. It is on this point of view that the State Government passed the Resolution dated 29.12.97 and separately prescribed the terms and conditions, salary, other allowances and perks as also tenure upto 58 years of age for appointees from the Bar.

##. We are not persuaded to accept the explanation offered on behalf of the State Government now in reply affidavit that the mistake in passing the Resolution contrary to the Rules came to the notice of the Government when the then Governor pointed out the same and that the Resolution came to be passed under pressure of Public Interest Litigation. Both the above stands taken on behalf of the State Government cannot coexist. Either of them may be true and not both. It may be that the State Government might itself commit a mistake in passing the Resolution contrary to the statutory Rules or the mistake came to its notice on the same being pointed by the then Governor. So far as the pressure of Public Interest Litigation is concerned, there was no coercion exercised by the Court and it was well within the rights of the State Government to take a plea before the Court that the existing statutory Rules fully cover the tenure and terms and conditions of appointees from the Bar.

##. We are also not impressed by the argument advanced by the learned counsel for the State that the appointment to the Tribunal is an appointment on a "tenure post" which has limited duration and therefore, the petitioner cannot claim right of continuity. A "tenure post" is defined under clause 56-A of Rule 9 of the Bombay Civil Services Rules, 1959, as under:

> "(56-A) "Tenure post" means a permanent post which an individual Government servant may not hold for more than a limited period without reappointment"

As we have examined the provisions of Section 3 of the Act, the appointment at the Tribunal is not an appointment to a "tenure post" under the Act. Section 4 of the Act clearly empowers the State Government to prescribe term or tenure and condition of service of the Tribunal by Rules. The Act therefore does not make it a "tenure post". Rule 2 of the Rules merely regulates the term and tenure of an appointee to the Tribunal and would not render the post as a "tenure post". The provisions of Section 4 of the Act enable the State Government to prescribe Rules to give appointment to the Tribunal not for a limited duration but for a longer period including based on age. It is therefore not possible to accept that the appointment to the Tribunal is an appointment to a "tenure post".

##. On the interpretation of the Rules read as a whole in all its parts, we have come to conclusion that they intend to regulate terms and conditions of an appointee to the Tribunal only from service. The terms and conditions of service of an appointee from Bar having not been covered by the Rules was an unoccupied field on which, in the absence of statutory Rules, executive order or Resolution could have been passed. We rely on the decision of Hon'ble Supreme Court in the case of A.B.Krishna and ors. v. State of Karnataka, reported in AIR 1998 SC 1050. On an unoccupied subject under service Rules framed under Article 309, the Hon'ble Supreme Court observed thus:

> ".....As a matter of fact, under the scheme of Art.309 of the Constitution, once a Legislature intervenes to enact a law regulating the conditions of service, the power of Executive, including the President or the Governor, as the case may be, is totally displaced on the

principle of "Doctrine of Occupied Field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue Executive instructions or to make a Rule under Art.309 in respect of that matter."

See also the following observations in the case of B.N.Nagarajan & ors. v. State of Mysore & ors., reported in AIR 1966 SC 1942:

".....There were no statutory rules to govern the appointments. Rule 3 of the Mysore State Civil Service (General Recruitment) Rules, 1957 did not prevent the State from exercising its executive power of appointing Assistant Engineers and determining their conditions of service by executive order....."

##. The learned Single Judge, in the order under Appeal, did not advert to the arguments based on the interpretation of Rules and came to a conclusion that statutory Rules govern the terms and conditions of services also of an appointee from the Bar. On the interpretation that we have placed on the Rules, we have come to the conclusion that they are not attracted and were never intended to be attracted to an appointee from the Bar.

##. In view of the discussion and conclusion aforesaid, we do not consider it necessary to go into other contentions advanced on behalf of the petitioner that the impugned order of termination is bad being a non speaking order without reasons and that the Rules if made applicable to an appointee from the Bar would erode independence of judiciary and would be disincentive to the members of the Bar from accepting appointment to the Tribunal, etc.

##. As a result of the aforesaid discussion, the Appeal succeeds and the same is allowed. The impugned judgment and order of the learned Single Judge dated 28.7.2000, 4.8.2000, 7.8.2000 & 11.8.2000, is hereby set aside. In consequence of allowing the Appeal, the impugned order dated 13.4.2000 (Annexure-A to the petition) terminating the services of the petition as a member of the Tribunal is quashed and the appointment order dated 13.4.2000 (Annexure-B to the petition) issued in favour of private respondent Shri A.S.Trivedi, to fill the vacancy in her place is also quashed.

##. On the basis of interim orders made by this Court

from time to time, the petitioner continues to hold the office and is discharging functions as a Tribunal which she shall now be allowed to carry on uninhibited on the same terms and conditions as have been laid down in the Resolution dated 29.12.97 (Annexure-G to the petition). In the circumstances, the petitioner shall also be entitled to costs to be paid by the State of Gujarat. The counsel's fee is quantified at Rs.5,000/=, if certified.

##. In view of the fact that the order dated 13.4.2000 appointing Shri A.S.Trivedi as the Tribunal in place of the appellant-original petitioner, is quashed, Civil Application No.11929 of 2000, filed by Shri A.S.Trivedi for directing the State of Gujarat to pay him salary and all consequential benefits, is hereby rejected. Notice is discharged.

(D.A.Mehta, J.)

(sunil)